IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 144 of 1995

The Commissioner of Income Tax ... Applicant.

vs.

M/s. Audco India Ltd. ..... Respondent

Mr. Parag Vyas i/b. H. D. Rathod for Applicant.
Mr. P. D. Damodar i/b. Kanga & Co., for Respondent

CORAM: V**. C. DAGA AND A. S. AGUIAR JJ.**

Date: 10th August, 2005.

P. C. :

1. By this reference arising out of I.T.A. No. 5398/Bom/1986, for Assessment Year 1983-84, under section 256(1) of the Income-tax Act the Tribunal has referred the following question of law for opinion at the instance of the Revenue:

> (1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the contribution of Rs.4,24,857 made by the assessee to the approved superannuation fund as for the past services of the employee admitted to the membership of the fund during the year under consideration should be allowed as a deduction?

1. Both counsel appearing for the rival parties agree that the above questions have been covered by decision of the Apex Court. The

first question is covered by the judgment in the case of **Commissioner of Income Tax vs. Sirpur Paper Mills** , reported in [1999] 237 ITR 41 (SC) where the Apex Court held that deductions of contribution to superannuation fund is allowable as revenue expenditure. In this view of the matter both the questions referred to us is answered in the affirmative i.e. in favour of the assessee and against the Revenue. Reference accordingly disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

-x-